Order dated 13th July 2005

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6992 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

CHIMANBHAI HARKHABHAI MAYAVANSHI - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.
NOTICE SERVED for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE M.R. SHAH

Date : 13/07/2005

ORAL JUDGMENT

In this petition, notice for final disposal is already issued and inspite of service of notice nobody appears on behalf of the respondent. The

matter is adjourned time and again still nobody appears on behalf of the respondent. Under the circumstances, this Court has no other alternative but to decide and dispose of the present petition in absence of representation on behalf of the respondent.

2. In this petition under Article 226 / 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and award dated 2.8.2004 passed by the Industrial Tribunal, Vadodara, in Reference (IT) No. 228/1999 in partly allowing the same and quashing and setting aside, the order of punishment passed by the disciplinary authority dated 17.5.1988 insofar as it imposes punishment of reduction of 10 stages in the basic pay-scale of the respondent conductor by reducing the punishment to reduction of 3 stages only in the basic pay-scale of the respondent conductor and withholding of 3 increments with permanent effect.

3. The respondent workman was serving as a Conductor. While he was on duty on 26.2.1998 there was checking by the Checking Squad when it was found that though fare was collected from 5 passengers the respondent had not issued tickets and the respondent workman was chargesheeted for the same and departmental enquiry was initiated against him. The

respondent workman-conductor also admitted the fact of collecting the fare and not issuing the tickets. At the relevant time of checking statements of passengers were also recorded. On completion of departmental enquiry after giving opportunity of hearing to the respondent workman and after taking into consideration the evidence on record the charge of not issuing tickets though fare was collected from 5 passengers levelled against the respondent workman came to be proved and the disciplinary authority imposed the punishment of reduction of 10 stages in the basic pay-scale of the respondent conductor. Being aggrieved and dissatisfied with the aforesaid order of punishment, the respondent workman raised an industrial dispute which was referred to the Industrial Tribunal, Vadodara for adjudication being Reference (IT) No. 228 of 1999. Though the Industrial Tribunal has held that the charge levelled against the respondent workman with regard to non-issuance of tickets inspite of collection of fares from 5 passengers is proved; that the initiation of departmental enquiry is just and proper; and that adequate opportunity was given to the respondent workman, exercising its jurisdiction under Section 11-A of The Industrial Disputes Act, 1947 (“the ID Act” for short), the Tribunal interfered with the order of punishment and substituted the same by the order reducing the basic pay-scale by three stages and stoppage of 3 increments with permanent effect. Being aggrieved and dissatisfied with the judgment

and award passed by the Industrial Tribunal in reducing the order of punishment and partly allowing the Reference by quashing and setting aside the order of punishment passed by the disciplinary authority of reduction of 10 stages in the basic pay-scale of the respondent workman, the petitioner Corporation has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Shri Hardik Raval, learned advocate appearing on behalf of the petitioner Corporation has vehemently submitted that once the charge of collection of fare from 5 passengers and non-issuance of tickets against the respondent workman came to be established and though the Industrial Tribunal has held initiation of departmental enquiry as legal and valid and inspite of admission on the part of the respondent Conductor that he had collected the fares but not issued the tickets the Tribunal was not justified in interfering with the order of punishment imposed by the disciplinary authority. He has further submitted that in fact though it was a case of dismissal from service the petitioner Corporation has taken a lenient view to see that there is no economic death of the respondent workman and his family members and inspite of such lenient approach the Tribunal has interfered with the order of punishment and therefore the judgment and order of the Tribunal should be quashed and set aside. He has further submitted that

in the aforesaid facts and circumstances the interference by the Industrial Tribunal with the order of disciplinary authority would be exceeding the jurisdictional powers vested in it and requested to allow the present Special Civil Application. In support of his submissions, Shri Raval has relied upon the judgment of the learned Single Judge of this Court in the case of Divisional Controller, GSRTC Vs. Raghabhai Jalmabhai Taral, reported in 2001(2) GLH Page 533 wherein it is held that the conduct that though the fare was collected but tickets were not issued is nothing but disloyalty to the Corporation and the same is a serious misconduct, the Industrial Tribunal has materially erred in exercising the jurisdiction under Section 11-A of the I.D. Act while quashing and setting aside the order of dismissal and giving reinstatement. And therefore it is requested to dismiss the present petition.

5. As stated hereinabove, though served nobody appears on behalf of the respondent-Conductor and the matter had been adjourned time and again. Under the circumstances, this Court has no other alternative but to decide and dispose of the present petition ex-parte on merits on the basis of the material available on record and the judgment and award passed by the Industrial Tribunal.

6. It is an admitted position that the charge against the respondent workman of non-issuance of tickets inspite of collection of fares from 5 passengers has been proved not only in the departmental enquiry but the Industrial Tribunal has also held to that effect. It is also not in dispute that there are past defaults to the credit of the respondent workman and some of them were with regard to not issuing the tickets. Inspite of the aforesaid fact and the finding, the Industrial Tribunal has interfered with the order of punishment exercising power under Section 11-A of the I.D. Act. It is required to be noted that the punishment which was imposed by the disciplinary authority was reducing to the respondent workman by 10 stages in basic pay-scale. As held by the Hon'ble Supreme Court in the case of R.S.R.T.C. Vs. Ghanshyam Sharma, reported in (2002) 10 SCC Page 330, act of bus conductor of carrying passengers without issuing tickets amounts to dishonesty or grave negligence and for such misconduct even punishment of removal from service is held to be justified. The Hon'ble Supreme Court, in the aforesaid decision, has also held that Labour Court under Section 11-A while upholding the finding that respondent was guilty of misconduct was not justified in directing reinstatement with continuity of service but without backwages. A similar question arose in the case of Divisional Controller (supra) where, in case of dismissal of a conductor from service by the

disciplinary authority and interference of the Labour Court in exercise of power under Section 11A of the ID Act after having found guilty of misconduct of not issuing tickets though fare was collected, this Court after considering the judgment of the Hon'ble Supreme Court in the case of Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) And Others (2000) 7 SCC 517 and another Judgment of the Hon'ble Supreme Court in the case of U.P. State Road Transport Corporation And Others Vs. A.K. Parul, reported in (1998) 9 SCC 416 has held that though the powers vested in the industrial adjudicators under Section 11-A of the Act are having wide and discretionary, the adjudicators cannot exercise the discretionary power in an arbitrary manner and discretion has to be exercised in judicial and judicious manner and in accordance with the well-recognised principles in that regard and has to examine carefully the facts and circumstances of each case. In the aforesaid case it is also held by the learned Single Judge of this Court that if it is found that the conductor had collected the fare but did not issue tickets it is nothing but disloyalty to the Corporation and the same is a serious misconduct and so holding the learned Single Judge has quashed and set aside the judgment and award passed by the Labour Court by which the order of dismissal was set aside and order of reinstatement was passed.

7. Considering the aforesaid judgment of the Hon'ble Supreme Court as well as of the learned Single Judge of this Court and considering the fact that the charge of not issuing the tickets after collecting fares from 5 passengers is proved and even it came to be admitted by the respondent workman, the Industrial Tribunal has materially erred in interfering with the order of punishment imposed by the disciplinary authority. In fact, looking to the facts and circumstances and the judgment of the Hon'ble Supreme Court as referred hereinabove, it was a fit case for dismissal, however, the disciplinary authority has taken the lenient view of reduction of 10 stages in the basic pay-scale of the respondent conductor which was not required to be interfered with by the Industrial Tribunal looking to the misconduct and the establishment of charge,and by reducing the same, the Industrial Tribunal has exceeded in its jurisdiction and the powers under Section 11-A of the I.D. Act. Under the circumstances, the impugned judgment and award passed by the Industrial Tribunal cannot be sustained and the same is required to be quashed and set aside.

8. For the reasons stated hereinabove, the petition succeeds. The judgment and award passed by the Industrial Tribunal is hereby quashed and set aside and the order passed by the disciplinary authority is

restored. Rule is made absolute with no order as to costs.

[M.R. Shah, J.]

RMR